

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2510 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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G B RAVAL

Versus

STATE OF GUJARAT

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Appearance:

MR GIRISH PATEL for Petitioners

MS MANISHA LAVKUMAR, ASSISTANT GOVERNMENT PLEADER for  
Respondent No. 1, 4

RULE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of certiorari or a writ of mandamus or any other appropriate writ, order or direction to quash and set aside the order dated March 4, 1989 passed by the

Director of Education (Primary) holding that the petitioners are not entitled to selection grade as they

had not completed 15 years of service as stipulated in the Notification dated September 16, 1976 issued in exercise of the powers conferred on the Government by sub-section 3 of Section 20 of the Bombay Primary Education Act, 1947 ('The Act' for short). The petitioners have also prayed to restrain the respondents from withdrawing the selection grades granted to the petitioners in the cadre of primary teachers and from requiring the petitioners to pay back the difference of salary which they had received consequent on the grant of selection grade by seeking to implement the order dated March 4, 1989 passed by the Director of Education (Primary). The petitioners have further prayed to direct the respondents to effect revision in the pay scales of the petitioners with effect from January 1, 1986.

2. The petitioners Nos. 1 to 6 joined as Primary Teachers, Gandhinagar with effect from September 15, 1965, November 29, 1965, August 19, 1969, December 2, 1968, June 9, 1969 and August 19, 1969 respectively. Under the Gujarat Civil Services (Revision of Pay) Rules, 1975 a provision has been made for granting selection grade in respect of various cadre posts included in the Schedule appended to the said Rules. Therefore, Government of Gujarat by Resolution dated January 17, 1976 provided that the holders of various cadre posts included in the Schedule appended to the Gujarat Civil Services (Revision of Pay) Rules, 1975 should be granted selection grade if the Government servant had covered at

least 3/4th span of the scale provided. It may be mentioned that the rates of pay and allowances and terms of employment in respect of the members of the staff maintained by District School Board and of the primary school teachers maintained by an authorised municipality has to be fixed from time to time by the State Government as provided in sub-section 3 of Section 20 of the Act. Accordingly, a Notification dated September 16, 1976 was issued by the State Government in exercise of the powers conferred by sub-section 3 of Section 20 of the Act amending Government Notification dated December 2, 1975 and providing that selection grade would be awarded to those trained primary teachers who have completed 15 years of service. The said Notification is produced by

the petitioners at Annexure B of the petition.

3. By Government Resolution dated July 17, 1979 issued by the Gujarat Government and Finance Department, it was decided that those Government servants who had reached 3/4th span of the scale or those who had put in 14 years of service should be accorded selection grade. The said Government Resolution was made effective from July 1, 1979. Thereafter, by Government Resolution dated October 22, 1980 issued by the Finance Department, the criterion of covering of 3/4th span of scale or 14 years of service was revised and it was provided that those who had covered 2/3rd span of the scale or had put in 10 years of service in the cadre would be awarded selection grade. Applying the criterion laid down in Government

Resolution dated October 22, 1980, the petitioners Nos. 1 to 6 were granted selection grade with effect from September 14, 1979, November 28, 1979, January 1, 1981, December 1, 1981, July 1, 1982 and July 1, 1982 respectively. As the petitioners were entitled to selection grade in terms of Notification dated September 16, 1976 issued by the State Government in exercise of the powers conferred by sub-section 3 of Section 20 of the Act, a decision was taken on July 16, 1987 by the Administrative Officer, Gandhinagar City Area, Gandhinagar to recover difference of salary which the petitioners had received consequent upon the grant of selection grade. That order was challenged by the petitioners in Special Civil Application No.3798 of 1987. In the said petition on a statement being made by the learned Assistant Government Pleader, The Director of Education (Primary) was directed to hear the petitioners on the question whether they were entitled to have the benefit of selection grade and pass appropriate order. In compliance with the directions given by the High Court, the petitioners were heard and thereafter, the Director of Education (Primary) has passed the impugned order dated March 4, 1989 holding that the petitioners were not entitled to selection grade as they had not completed 15 years of service. That order is the subject matter of challenge in the present petition. According to the petitioners, the petitioners are primary teachers working in the primary schools in the Gandhinagar

township under the direct control of the Education Inspector of the Government of Gujarat and as they are employees of the State Government, they are entitled to selection grade as provided in Government of Gujarat Resolution dated January 17, 1976 as amended subsequently by other Resolutions. What is pleaded by the petitioners is that the impugned order has created a hostile discrimination between the petitioners who are Panchayat servants and other Panchayat servants all of whom belong to the same class and therefore the impugned order being arbitrary, irrational and discriminatory is liable to be set aside. According to the petitioners, they were rightly granted selection grades in terms of the Government Resolution issued by the Finance Department and therefore the order passed by the Director of Education (Primary) holding that the petitioners are entitled to selection grade only after completion of 15 years of service should be set aside. Under the circumstances, the petitioners have filed the present petition and claimed reliefs to which reference is made earlier.

4. Mr. I.K. Parmar, Incharge District Education Officer, Gandhinagar has filed reply affidavit controverting the averments made in the petition. What is averred in the reply is that in view of the notification issued under the provisions of Section 20(3) of the Bombay Primary Education Act, 1947 the petitioners

are entitled to grant of selection grade only on completion of 15 years of service and therefore the petition should not be accepted.

5. Mr. Girish C. Patel, learned counsel for the petitioners contended that the petitioners being Government servants are entitled to grant of selection grade in terms of Government Resolution dated January 17, 1976 as amended subsequently by Resolutions dated July 17, 1979 as well as October 22, 1980 and therefore the decision of the Director of Education (Primary) being illegal should be set aside. What was pleaded is that the petitioners were rightly awarded the selection grade and therefore the reliefs claimed in the petition should be granted.

6. Ms. Manisha Lavkumar, learned Assistant Government Pleader submitted that grant of selection grade to the primary teachers is governed by Notification

issued by the State Government under Section 20(3) of the Bombay Primary Education Act, 1947 and therefore the petition should be dismissed.

7. I have heard the learned counsel for the parties and considered the different Resolutions which form part of record of the petition. Section 20 sub-section 3 of the Bombay Primary Education Act specifically provides that the rates of pay and allowances and terms of

employment in respect of the members of the staff maintained by a District School Board and of the primary school teachers maintained by an authorised municipality shall be as fixed from time to time by the State Government. In exercise of the powers conferred by sub-section 3 of Section 20 of the said Act, the Government has issued Notification dated September 16, 1976 stipulating that the primary teachers would be entitled to selection grade on completion of 15 years of service. It may be stated that this Notification is neither modified nor amended by the State Government in exercise of the powers conferred by Section 20(3) of the Bombay Primary Education Act, 1947. As the grant of selection grade of primary teachers is governed by Notification dated September 16, 1976 the petitioners would be entitled to selection grade only on completion of 15 years of service. The Resolutions on which the petitioners place reliance for the purpose of claiming selection grade are not applicable to the primary teachers in view of specific provisions of Section 20(3) of the Act and therefore in my view the Director of Education (Primary) was justified in concluding that the petitioners were awarded selection grade under a mistaken belief that their cases were covered by Government Resolution dated September 16, 1976 as subsequently modified by other resolutions. The Government having not issued any Notification under the Bombay Primary Notification under the Bombay Primary Education Act, 1947

regarding selection grades modifying earlier Notification dated September 16, 1976 which has insisted upon completion of 15 years of service the petitioners are not entitled to the benefit of other Government Resolutions and therefore the impugned order is not liable to be set aside. Under the circumstances, the prayers made in the

petition cannot be granted. However, it is an admitted position that by this time, the petitioners have completed 15 years of service as stipulated in Government Notification dated September 16, 1976 issued under sub-section 3 of Section 20 of the Bombay Primary Education Act, 1947. Therefore, they are entitled to selection grade in terms of the said Notification. Under the circumstances, interest of justice would be served if the Director of Education (Primary) is directed to consider the question of grant of selection grade to the petitioners in terms of Notification dated September 16, 1976 within stipulated time.

8. For the foregoing reasons, the petition fails and is dismissed. The Director of Education (Primary) is directed to consider the question of grant of selection grade to the petitioners in terms of the notification dated September 16, 1976 issued under Section 20(3) of the Act, as early as possible and preferably within two months from the date of receipt of the writ. The recovery, if any, be adjusted against the payment to be made to the petitioners on the basis of revised pay

scales. Subject to aforesaid directions, Rule is discharged with no orders as to costs. Ad-interim relief granted earlier is hereby vacated.

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